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serting the illegality of the rate of additional charter hire, Judge Smith found that the provisions of Clause 13 might have been intended by the parties to cover the questions of accounting procedures and expenditure disallowances raised by these libels[4] (Pet. App. in No. 290, pp. 38–40).

Judges Clark and Waterman, agreeing with Judge Smith on the question of limitations with regard to the libels asserting illegality of additional charter hire rate, disagreed with Judge Smith on the necessity for a remand on the issues of accounting procedures and expenditure disallowances (Pet. App. in No. 290, pp. 43–49).[5] In their view, Clause 13, either by itself or when read against the background of other pertinent clauses of the charter, could not be read to postpone the necessity for bringing suits on these claims until years after redelivery of the vessels and preliminary payments of additional charter hire (Pet. App. in No. 290, pp. 43–49). Moreover, they thought that the Maritime regulations controlling the payment of additional charter hire required by Clause 13 were com-

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[4] The remands were ordered subject to certain limitations. They included only libels filed within two years of making preliminary statements under Clause 13 or within two years from the last Maritime audit, whichever was earlier (Pet. App. in No. 290, pp. 39–40, 42).

[5] They agreed, however, with Judge Smith that, if there were to be remands on the issues of accounting procedures and expenditure disallowances, these remands should be limited to libels filed within two years of making a preliminary statement under Clause 13 or two years of a final audit, whichever was earlier (Pet. App. in No. 290, p. 49). Judges Friendly and Moore felt that all libels on these issues, as well as on the asserted illegality of the charter rate, should be remanded.

pletely inconsistent with the libelants' assertion of such a postponement (Pet. App. in No. 290, pp. 46–47).

REASONS FOR GRANTING THE WRIT

In Nos. 290 and 332, this Term, respondents here, as well as other libelants, seek review of the *en banc* decision below insofar as it held their libels attacking the legality of the rate of additional charter hire to be time-barred. We are filing a brief in opposition in those cases in which we set forth the reasons why we consider that issue not to warrant review by this Court. While we do not consider the question posed in this cross-petition to call for independent review by the Court, we believe that it should be reviewed if (but only if) the Court grants the petitions in Nos. 290 and 332.

By his ruling remanding certain of the libels for further evidence with respect to accounting procedure and expenditure disallowance questions, Judge Smith interpreted Clause 13 of these charters, in our view, in a fashion not only inconsistent with his analysis of the clause with regard to the illegality-of-rate issue but also with the provisions of Clause 13 and the underlying regulations. In any event, if this Court grants the petitions in Nos. 290 and 332 raising the question of the interpretation of Clause 13 as to one aspect of the case, we believe that it would be proper for the Court to have the entire controversy with regard to Clause 13 before it.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that, if the Court grants the petitions for writs

of certiorari in Nos. 290 and 332, this Term, then it should also grant this conditional cross-petition for a writ of certiorari.

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IN THE

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OCTOBER TERM, 1961

UNITED STATES OF AMERICA, PETITIONER

v.

STOCKARD STEAMSHIP CORPORATION, ET AL.

RESPONSE TO GOVERNMENT'S CONDITIONAL CROSS-PETITION

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Respondents join the Government in requesting this Court to review the decision of Judge Smith interpreting Clause 13 of the charters. They agree with the Government (cross-petition, p. 7) that Judge Smith's decision is inconsistent in reasoning, and inconsistent with Clause 13 and the underlying regulations.

The reasons why respondents believe Judge Smith's decision is inconsistent and erroneous are stated (a) in Judge Friendly's dissenting opinion, (b) in respondents' petition, and (c) in their reply to the Government's brief in opposition in No. 332, filed concurrently herewith.

Respectfully submitted,

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